

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

J.W., a minor, by and through Amanda Williams, Guardian and Next Friend,

Case No. 3:21-cv-00663-CWR-LGI

Plaintiff,

Hon. Carlton W. Reeves
Mag. LaKeysha Greer Isaac

v.

The City of Jackson, Mississippi; Chockwe A. Lumumba, Jr.; Tony Yarber; Kishia Powell; Robert Miller; Jerriot Smash; The Mississippi State Department of Health; Jim Craig; Trilogy Engineering Services, LLC; and John Does 1-40

Defendants.

**RESPONSE IN OPPOSITION TO MISSISSIPPI STATE DEPARTMENT
OF HEALTH AND JIM CRAIG’S MOTION TO DISMISS**

Plaintiff, J.W., a minor, by and through Amanda Williams, Guardian and Next Friend, by and through their undersigned counsel and pursuant to L.U. Civ. R. 7 and Fed. R. Civ. P. 12(b)(6), hereby submit this Memorandum of Law in Opposition to the Motion to Dismiss from Defendant Mississippi State Department of Health (“MSDH”) and Defendant Jim Craig (“Craig”).

1. Plaintiff filed his Initial Complaint and Jury Trial Demand against the above-named Defendants in the United States District Court for the Southern District of Mississippi on October 19, 2021, alleging violations of Constitutionally protected

rights and state negligence. (Doc. 1) On February 17, 2021, Plaintiff filed the Amended Complaint with the same causes of action against the same Defendants named above. (Doc. 51)

2. Plaintiff brought two 42 U.S.C. § 1983 claims against Defendant Jim Craig and brought one state law negligence claim against Defendant Craig and Defendant MSDH. The first Section 1983 claim against Craig alleges his actions violated Plaintiff's bodily integrity and his established substantive due process rights. The second Section 1983 claim against Craig alleges that his actions violated Plaintiff's established substantive due process rights to be free from state created danger. The state law negligence claims against State Defendants allege that their actions breached an owed duty to Plaintiff and that Plaintiff suffers from permanent injury as a result.

3. On March 10, 2022, State Defendants filed a Motion to Dismiss Plaintiffs' Second Amended Complaint (Doc. 60) and a Memorandum of Law in Support of their motion, (Doc. 61).

4. In their motion, State Defendants seek to dismiss Plaintiff's two Section 1983 claims against Defendant Craig and Plaintiff's state law negligence claim against State Defendants.

5. State Defendants argue there is no Constitutional right to contaminant-free water. (Doc. 61 at p. 4).

6. MSDH and Craig make this argument as the Primacy Agency and Director responsible for enforcing the Safe Drinking Water Act for the entire state of Mississippi.

7. While this is a distasteful argument, it is not the Constitutional right Plaintiff alleges were violated. Plaintiff alleges that Craig's conduct violated his bodily integrity and violated his right to be free from state created danger. Both are clearly established Constitutional substantive due process rights under the Fourteenth Amendment.

8. State Defendants argue in the alternative that even if there is a Constitutional right to contaminant-free water now, it was not clearly established at the time of Craig's conduct. (Doc. 61 at p. 4). Again — this argument mischaracterizes Plaintiff's allegations.

9. Further, State Defendants seek to dismiss Plaintiff's state law negligence claims for similarly misleading arguments involving the Mississippi Tort Claims Act ("MTCA"). (Doc. 61 at p. 4). State Defendants fail to prove that MSDH and Craig meet the discretionary function immunity exemption. They also fail to disprove that Plaintiffs' notice of claim letters are in compliance with MTCA requirements.

10. In support of this Response, Plaintiff incorporates the accompanying Memorandum of Opposition to the Motion to Dismiss from Defendants Mississippi State Department of Health and Jim Craig.

WHEREFORE, Plaintiff respectfully requests that this Court deny the Motion to Dismiss from Defendants MSDH and Craig.

Dated: May 9, 2022.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2022, the foregoing document was filed via the U.S. District Court's CM/ECF electronic system and a copy thereof was served upon all counsel of record.

/s/ Kimberly L. Russell

Kimberly L. Russell